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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/617,850	07/14/2003	Amar Lulla	TPP 31402A	7989

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EXAMINER

PATEL, NIHIR B

ART UNIT PAPER NUMBER

3743

DATE MAILED: 06/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/617,850

Applicant(s)

LULLA ET AL.

Examiner

Nihir Patel

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on March 23<sup>d</sup>, 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☐ Claim(s) \_\_\_\_\_ is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 5-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Arguments***

Applicant's arguments filed on March 23<sup>rd</sup>, 2005 have been fully considered but they are not persuasive. The applicant argues that the members forming the chamber of Berg et al. are not two frustoconical shape members. The examiner disagrees. Even though the reference does not show two frustoconical members, the applicant specification (**page 3, third paragraph**) clearly implies that "the spacer devices can be of various shapes and construction. Since the applicant has not established criticality on why the two members must be frustoconical shape, it is simply a matter of design choice.

Finally the applicant argues that even though Armer lists polyamide as one possible material from which the housing may be formed, there is no specific teaching to select polyamide. It is obvious to one in the ordinary skill of the art to chose polyamide from the list provide as taught by Armer in order to provide better delivery of small particles.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1, 5, 6 and 8 through 13** are rejected under 35 U.S.C. 103(a) as being unpatentable over Schmidt et al. (US Pub. 2002/0026935) in view of Armer et al. (US 6,095,141) and further in view of Berg et al. (US 6,435,176).

**Referring to claims 1, 5, 6 and 8 through 13**, Schmidt discloses the applicant's invention as claimed with the exception of providing a chamber that is made from polyamide that comprises two frustoconical members assembled together coaxially at divergent ends, the inlet and outlet being respectively at opposed ends. Armer discloses methods and apparatus for delivering aerosolized medication that does provide a housing that is formed of polyamide (see **column 9 lines 20-25**) and Berg discloses a spacer for use with a metered dose inhaler that does provide a chamber that comprises two chambers that are assembled together coaxially at divergent ends the inlet and outlet being respectively at opposed ends. Even though the reference does not show two frustoconical members, the applicant specification (**page 3, third paragraph**) clearly implies that "the spacer devices can be of various shapes and construction. Since the applicant has not established criticality on why the two members must be frustoconical shape, it is simply a matter of design choice. Therefore it would have been obvious to modify Schmidt's invention by providing an aerosol medicament reservoir (housing) and chamber that are made of polyamide as taught by Armer in order to better delivery of small particles and to provide two members that are assembled together coaxially at divergent end, the inlet and outlet being respectively at opposed ends as taught by Berg in order to obtain great results and prevent leakage.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schmidt (US Pub. 2002/0026935) as applied to claims **1, 5, 6 and 8 through 13** above, and further in view of Hallworth et al. (US 4,206,758).

**Referring to claim 7**, Schmidt discloses the applicant's invention as claimed with the exception of providing a locking means that are provided to lock the two members together in

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assembled condition. Hallworth discloses a device for dispensing medicaments that does provide a locking means that are provided to lock the two members together in assembled condition.


Therefore it would have been obvious to modify Schmidt's invention by providing a locking means that are provided to lock the two members together in assembled condition as taught by Hallworth in order to prevent the two chambers from separating during operation.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Nihir Patel whose telephone number is (571) 272-4803. The examiner can normally be reached on Monday-Friday from 7:30 am to 4:30 pm. If attempts to reach the examiner by telephone are unsuccessful the examiner supervisor Henry Bennett can be reached at (571) 272 4791.

NP  
May 17<sup>th</sup>, 2005

  
Henry Bennett  
Supervisory Patent Examiner  
Group 3700